

National Wetlands Mitigation Action Plan

In response to independent critiques of the effectiveness of wetlands compensatory mitigation for authorized losses of wetlands and other waters under Section 404 of the Clean Water Act (CWA), the Environmental Protection Agency, the Army Corps of Engineers, and the Departments of Agriculture, Commerce, Interior, and Transportation released the National Wetlands Mitigation Action Plan on December 26, 2002. The Plan includes 17 tasks that the agencies will complete by 2005 to improve the ecological performance and results of compensatory mitigation.



U.S. Department of Transportation
Federal Highway Administration

Background:

Reports published in 2001 by the National Academy of Sciences (NAS) and the General Accounting Office (GAO) provided a critical evaluation of the effectiveness of wetlands compensatory mitigation for authorized losses of wetlands and other waters under Section 404 of the CWA. Section 404 regulates discharges of dredged and fill materials into waters of the United States and requires compensatory mitigation for unavoidable impacts. The independent analyses and other commentaries highlighted a number of shortfalls and identified a variety of technical, programmatic, and policy recommendations for the Federal agencies, States, and other involved parties.

An interagency team drafted the National Mitigation Action Plan endorsing the goal of no net loss of wetlands and outlining specific action items that address the concerns of the NAS, GAO, and other independent evaluations. The 17 actions, with various agency leads, address areas of concern, including data collection and availability, clarifying performance standards, improving accountability, and integrating mitigation into the watershed approach.

Completing the actions in the Plan will enable the agencies and the public to make better decisions regarding where and how to restore, enhance, and protect wetlands; improve their ability to measure and evaluate the success of mitigation efforts; and expand the public's access to information on these wetland mitigation activities.



Albert Cerna

Examining a connection constructed to link the Columbia Slough and a new mitigation site during the 2003 Mitigation Stakeholder Forum held in Portland, Oregon.

Stakeholder Forums

In 1999, the Federal agencies began hosting a series of stakeholder forums to gather information and opinions on the concerns and challenges of compensatory mitigation. These forums have brought together a diverse group of individuals representing the regulated community, environmental organizations, academia, non-governmental organizations, and mitigation providers. The first forum was held in Washington, DC, in 1999, to discuss draft guidance on in-lieu-fee mitigation. The second forum was held in Baltimore, Maryland, in October 2001. This meeting helped lead to the formulation of the Action Plan. A third forum was held in Portland, Oregon, in July 2003, to discuss progress on Action Plan tasks and solicit input on future Action Plan tasks. For a complete summary of the forums, visit www.eli.org. Future forums are scheduled to occur in 2004 and 2005.



Port of Portland

Discussing maintenance issues at a two-year old mitigation site during the Portland Mitigation Stakeholder Forum.

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Components of the National Wetlands Mitigation Action Plan

Completion of the first task in the Plan, release of a revised Army Corps of Engineers Mitigation Regulatory Guidance Letter (RGL 02-2) occurred concurrent with the Plan. The remaining 16 actions, which will be completed by 2005, will address areas of concern including integrating mitigation into the watershed approach, improving accountability, clarifying performance standards, and improving data collection and availability. These actions are:

Integrating Mitigation into a Watershed Context

- Develop guidance on the use of on-site vs. off-site and in-kind vs. out-of-kind compensatory mitigation
- Develop guidance on the use of vegetated buffers as a potential component of compensatory mitigation
- Develop guidance on the appropriate use of preservation for compensatory mitigation
- Using the guidance developed above, conduct an analysis with Tribes and States on the use of compensatory mitigation within a watershed context and identify criteria for making mitigation decisions in this context

Improving Accountability

- Develop guidance that clarifies implementation of TEA-21 preference for mitigation banking
- Continue to provide financial assistance through EPA's wetlands grants program to encourage Tribes, States and others to increase the success of mitigation in their jurisdictions
- Develop guidance for those wetlands for which mitigation, restoration, or creation is not feasible or scientifically viable
- Clarify considerations for mitigation impacts to streams in the Section 404 program

Clarifying Performance Standards

- Develop a model mitigation plan checklist for permit applicants
- Develop guidance adapting the National Research Council's recommended guidelines for creating or restoring self-sustaining wetlands to the Section 404 program
- Analyze existing research to determine the effectiveness of using biological indicators and functional assessments for evaluating mitigation performance
- Building upon the biological indicators and functional assessments research, develop performance standards guidance on monitoring and adaptive management of mitigation sites
- Clarify key concepts related to performance standards

Improving Data Collection and Availability

- Compile and disseminate information regarding existing mitigation-tracking database systems
- Building upon the analysis of existing mitigation data base systems, develop a shared mitigation database
- Utilizing the shared database, provide an annual public report card on compensatory mitigation to complement reporting of other wetland programs



Dave Davis

Selected References

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